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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 NETFLIX, INC., a Delaware corporation,
11 Plaintiff
12 v.
13 BLOCKBUSTER, INC., a Delaware
corporation, DOES 1-50,
14 Defendant

Case No. C 06 2361 WHA

**PLAINTIFF NETFLIX'S NOTICE OF MOTION
AND MOTION UNDER CIVIL L.R. 7-11 FOR
RELIEF FROM JULY 28, 2006 DEADLINE IN
CASE MANAGEMENT ORDER AND FOR LEAVE
TO FILE AMENDED COMPLAINT**

Date: N/A per Civil L.R. 7-11
Judge: Hon. William Alsup

Notice of Motion and Motion

PLEASE TAKE NOTICE that Plaintiff Netflix hereby moves under Civil L.R. 7-11 for relief from the Court's Case Management Order for the purpose of seeking leave to file its Amended Complaint; and for such leave to file the Amended Complaint.

This Motion is based on this Notice of Motion and Motion; the below Memorandum in support thereof; all pleadings and papers filed herein; oral argument of counsel if a hearing is required by the Court; and any other materials that may be submitted at the hearing.

Memorandum in Support of Motion

On June 30, 2006, this Court issued its Case Management Order (“Order”) providing, “Leave to add any new parties or pleading amendments must be sought by July 28, 2006.” Order at 1 (¶ 3). Counsel for Netflix misinterpreted this Order to allow for amended pleadings to be simply filed before the July 28 deadline. Because of this oversight, two days before the deadline, on July 26, 2006, we filed Netflix’s Amended Complaint without an accompanying request for leave. Declaration of Leo L. Lam (“Lam Decl.”), Exh. A.

Yesterday (on August 1, 2006), counsel for Blockbuster sent a letter bringing to our attention that we had not obtained leave to file the Amended Complaint. *Id.*, Exh. B. Upon receipt of this letter, we rechecked the Order and informed counsel that we would immediately take steps to rectify our mistake. *Id.*, Exh. C. We also sought, but have not yet obtained, Blockbuster's stipulation to our filing of this motion for relief from the Order. *Id.*, ¶ 5.

We regret this oversight and any inconvenience that it may have caused, and request relief from the Order to allow leave for filing Netflix’s Amended Complaint. Blockbuster is not prejudiced because it has had notice of the same Amended Complaint since July 26, when we inadvertently filed it without a request for leave; and only three business days have elapsed since the July 28 deadline. Further, aside from typographical and grammatical changes to the original Complaint, the only amendment introduced by Netflix’s Amended Complaint is the addition of an allegation of willful infringement to the First Cause of Action regarding infringement of U.S. Patent No. 7,024,381 (“the ‘381 patent”). *Compare* Lam Decl., Exhibit C with Complaint (filed April 4, 2006) at ¶ 10; and ¶¶ 2, 5 in Prayer for Relief. This allegation of willfulness is premised

1 upon Blockbuster's ongoing infringement of the '381 patent after receiving notice by the
2 Complaint that Netflix originally filed on April 4, 2006.

3 For the reasons explained above, we apologetically request that the Court grant relief
4 from the July 28 deadline for seeking leave to amend as specified in its Order, and allow the
5 Amended Complaint that we inadvertently filed without a request for leave on July 26.

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7 Dated: August 2, 2006

Respectfully submitted,

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KEKER & VAN NEST, LLP

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By: /s/ Leo L. Lam

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Leo L. Lam

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Attorneys For Plaintiff NETFLIX, INC.

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